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STATE OF DELAWARE
OFFICE OF THE SECRETARY
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
NEW CASTLE, DELAWARE 19720
PHONE: (302) 421-6705

December 1, 1978

MEMORANDUM

TO: The Honorable Pierre S. du Pont, IV

FROM: Patricia C. Schramm PCS

SUBJECT: Delaware Laws and Regulations Regarding Burial, Cremation and Transport of the Dead

As you requested, I have consulted with the Attorney General's Office, Dr. Rose and Dr. Hameli to identify alternatives for handling various categories of bodies resulting from the recent mass deaths in Guyana. A summary of our discussions is as follows:

1. Transport of a body into and ultimately through Delaware would appear to be possible without complication if the body is accompanied by a permit for "burial, removal or other disposition issued in accordance with the law and regulations in force where the death or fetal death occurred." In other words, if we have such a permit from Guyana, we can permit the transport of the body through Delaware (16 Del. Code, 3151)

2. Burial in Delaware is a more complex issue. If a body is accompanied by the above-cited permit and an acceptable death certificate (with cause of death on the certificate), and is identified and claimed, the burial permit could be issued. I am informed that even under these conditions, it could be argued that the State has an obligation to investigate the death since circumstances suggest that the deaths were caused other than by natural causes in this instance (16 Del. Code, 3125 (e)).

Beyond these two general statements are several other more specific factors:

1. If there is no properly issued permit from Guyana for removal or other disposition, the bodies could not be transported into or through Delaware.

2. If there is no acceptable death certificate, there can be no burial in Delaware (16 Del. Code, 3151 (b) and (c)).

3. Cremation in Delaware would appear to be extremely unlikely because Delaware Code would require that a Medical Examiner or member of the Office of the Attorney General endorse a certificate to the effect that

there is no medical or legal reason why the destruction of the body by cremation should not be permitted (16 Del. Code 3162). Under the present circumstances, it is unlikely that such certification could be obtained, certainly not without investigation of death.

4. Any unclaimed and/or unidentified body should not be buried or cremated in Delaware without an investigation by the Medical Examiner. The Medical Examiner could waive the investigation in the case of identified bodies accompanied by acceptable death certificates and removal/disposition permits. However, this is not advisable because it would expose the State of Delaware to future lawsuits. It could be argued in such suits that the State had an obligation to investigate (29 Del. Code 4706) and failed to meet that obligation. Arguments will almost certainly arise concerning cause of death and suicide versus homicide.

The obligation to investigate the deaths in the case of the unclaimed and/or unidentified bodies presents a major practical problem. Our Medical Examiner investigates about 1,700 deaths per year which involve about 500 autopsies. In order to investigate these deaths which occurred in Guyana, the Medical Examiner would need substantial resources beyond those available in Delaware at this time. Dr. Hameli has estimated that a staff of 100 to 200 additional technicians and other personnel could conceivably complete the investigations within thirty days. However, with his current resources, it would take him many months - at least a year - to complete the investigations. This would mean neglecting most of the current duties of his office. This, of course, would be unacceptable.

I hope that this adequately summarizes the current dilemma. In short, transportation through the State could be handled with little difficulty. Cremation in Delaware would appear to be almost out of the question. Burial in Delaware, even in the case of identified and claimed bodies, accompanied by acceptable certificates, presents some legal problems. Burial in Delaware of unclaimed and/or unidentified bodies would require investigation of death by the Medical Examiner and could not be completed for some time to come. Let me know if we can assist you further in this situation.

PCS/bd

cc: David Swayze
Dr. Barbara Rose
Dr. Ali Hameli
Edward Kafader
Mr. Bruce Kreger

STATE OF DELAWARE
OFFICE OF THE SECRETARY
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
NEW CASTLE DELAWARE 19720
PHONE (302) 421 6704

January 16, 1979

The Honorable Barbara M. Watson
Assistant Secretary for Consular Affairs
Department of State
Washington, D. C.

Dear Secretary Watson:

It is my understanding that you are the State Department Official responsible for overseeing the disposition of the remains of the victims of the Guyana tragedy. As Secretary of the Delaware Department of Health and Social Services, I am responsible for administering Delaware's laws regarding burial or cremation of the dead and also the investigation of death.

For about six weeks now, we have been trying to make it clear to State Department representatives that Delaware laws make it virtually impossible for us to permit the burial or cremation of any of the Guyana victims in Delaware. The die was cast when the State and Defense Departments removed the remains from Guyana without appropriate medicolegal investigations of the cause and manner of death. Since this investigation was not undertaken in Guyana and since the remains were embalmed here without appropriate investigations, we cannot issue the necessary burial or cremation permits in Delaware. The officials who must put their reputations and signatures on the line are not prepared to issue burial and cremation permits without the necessary medicolegal investigations.

State Department representatives were told what was needed to meet Delaware requirements at a meeting on November 29, 1978. Attending that meeting for the State were the Director of the State Division of Public Health and the Chief Medical Examiner of the State of Delaware. I recognize the pressures on the State Department attorneys but I cannot understand why they continue to press Delaware officials to permit burial or cremation here when we have made our position clear.

Despite our position, State Department representatives asked our attorney to request that we review death certificates, the coroners record and autopsy reports (when available) to see whether they would be acceptable to permit burial or cremation in Delaware without further investigation by our Medical Examiner. Last week, the State Department representatives gave

us copies of pages from a Guyana death register and told us that these are Guyana death certificates. A copy is enclosed for your information. Without the records from the Coroner's Inquest in Guyana, we cannot officially evaluate the attached document because we have nothing to indicate how the information on the register was obtained. If you wish to pursue this after reading this letter, we will need to receive the records and minutes of the proceedings which are transmitted to the Director of Public Prosecution under Guyana law governing a coroner's inquest. We will especially expect to find copies of the signed statements of all witnesses who gave evidence at the inquiry. unreasonable

We will review the documentation as your representatives have requested. But please understand that we will be looking for the medical evidence considered by the Coroner's jury in arriving at its conclusions as to the causes and manner of these deaths. Without adequate medicolegal evidence, we will not be able to permit burial or cremation in Delaware.

Speaking frankly, we have been and continue to be extremely doubtful as to the availability of documentation adequate to satisfy Delaware laws in this instance. This is because we are aware of the circumstances surrounding the removal of these remains from Guyana and their embalmment without appropriate investigations. We are also aware of the way in which the Coroner's jury in Guyana reached its verdicts.

Given all of this reality, we in Delaware are wondering why your representatives continue to press the notion of burial or cremation in Delaware. Our laws are particularly strict in this area. It seems to us that a lot of our time and yours is being wasted on a course of action which is futile. We understand that the State Department has responsibility for the remains. However, we feel an obligation to inform you directly that the current efforts of the State Department in Delaware have virtually no potential for resulting in the permanent disposition of these remains.

I trust that this summary will be helpful to you in deciding upon a fruitful course of action. If I can be of further assistance, please do not hesitate to call.

Sincerely yours,

Patricia C. Schramm
Secretary

PCS:s-

cc: Mr. Bruce Dozier
The Honorable Pierre S. du Pont, IV
The Honorable Thomas B. Evans, Jr.
Mr. Michael White